

STATE OF NEBRASKA

DEPARTMENT OF INSURANCE

L. Tim Wagner

Director



Dave Heineman

Governor

N-O-T-I-C-E

TO: All Licensed Life and Health Insurance Producers

FROM: Nebraska Department of Insurance

DATE: November 17, 2005

Effective October 1, 2005, marketing activity for the new Medicare prescription drug benefit, Medicare Part D, became permissible. According to the Centers for Medicare & Medicaid Services (CMS), only state-licensed insurance producers may engage in marketing activity. The Medicare Modernization Act does not preempt producer licensing laws. Thus, state law and regulatory provision regarding producer activity apply to the marketing of Medicare Part D.

Normally, the Department of Insurance requires that producers have an appointment with the company or companies for which they sell. In this limited instance, the Department of Insurance will not require a producer to have an appointment with a company to sell Medicare Part D. However, a producer must still have an insurance producer license with the State of Nebraska.

CMS has received complaints about alleged misconduct by licensed producers with regard to Medicare Part D marketing. CMS will refer complaints it receives about producers licensed in this state to the Nebraska Department of Insurance. This Notice reminds licensed producers that they are subject to all laws and regulations of this state, including those relating to the duty of good faith and fair dealing, the suitability of sale, and the prohibitions against misrepresentation, churning and high-pressure sales tactics.

We view with a high degree of skepticism the use of a lead relating to Part D marketing activity to cross-sell other insurance products of any type. The new Part D benefit is fundamentally confusing for the Medicare beneficiary. It would be unwise for the producer to take advantage of the Part D lead to sell other insurance products to a Medicare beneficiary for which he or she may not be suited.

Allegations of misconduct related to Part D marketing will be thoroughly investigated by this office. Any proven misconduct will be prosecuted under the law of this state relating to producer licensing.